

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

JUAN RODRIGUES,
Appellant

v.

Docket No. G1-07-121

BOSTON POLICE DEPARTMENT,
Respondent

Appellant's Attorney:

Pro se

Respondent's Attorney:

Sheila B. Gallagher, Esq.
Boston Police Department
One Schroeder Plaza
Boston, MA 02120
(617) 343-4550

Commissioner:

John E. Taylor

DECISION

Pursuant to the provisions of G.L. c. 31 s. 2(b), the Appellant, Juan Rodrigues (hereinafter "Rodrigues" or "Appellant") appealed the decision of the Appointing Authority, Boston Police Department (hereinafter the "Department"), bypassing him for original appointment to the position of a Boston Police Officer. The Appeal was timely filed. A hearing was held on September 25, 2007 at the offices of the Civil Service Commission (hereinafter "Commission.") One (1) audiotape was made of the hearing. Since no notice was received from either party, the hearing was declared private.

FINDINGS OF FACT:

Based on the documents entered into evidence (Exhibits 1-7), a packet submitted by the Human Resources Division (hereinafter “HRD”) and the testimony of Edward Callahan, former Director of Human Resources for the Department, Deputy Superintendent Norman Hill, Commander of Recruit Investigations; and the Appellant, I make the following findings of facts:

1. On or about December 9, 2005, the Appellant submitted a Student Officer Application to the Department. (Ex.1)
2. The Appellant is presently a patrol officer in the Providence Police Department, and graduated from the Providence, Rhode Island Police Academy in January 2007. The Appellant’s past employment included a term of military service in the United States Marine Corps from 1996-2000 and a job at Federal Express (hereinafter “FedEx”) from approximately 2003-2005. (Testimony of Appellant)
3. The Appellant testified that he was not disciplined during his first three years in the Marine Corps, but was disciplined during his final year under a new Sergeant with whom he did not see “eye to eye.” He stated that there was a personality conflict and that the Sergeant wrote him up on four occasions. The incidents involve parking in an unlawful spot where he had previously parked routinely, carrying an identification badge with the incorrect rank, having a verbal argument with a superior officer and subsequently being written up for disrespect, and being late to check in at the barracks while on restriction. He stated that his write-ups constituted non-judicial punishments which did not allow for a court or judge or for evidence and witnesses to

be considered. The Appellant also stated that although he was demoted, he was subsequently promoted. (Ex. 2 and testimony of Appellant)

4. The Appellant testified that he received an honorable discharge and is eligible to re-enlist in the military. He submitted a Certificate of Release or Discharge from Active Duty. (Ex. 5)
5. While employed with FedEx, the Appellant was disciplined on two occasions. He received a May 28, 2003 letter from Fed Ex stating that he had been tardy a total of thirteen times, resulting in a punctuality rate of 95% while FedEx's rate for punctuality is 96%. On August 12, 2003 the Appellant received a performance reminder concerning his leaving two bags of freight behind when working. (Exs. 3 and 4)
6. On his Student Officer Application Form, the Appellant answered "no" to the question "Have you ever been disciplined by an employer for any reason?" (Ex. 1 and testimony of Hill)
7. The Appellant testified that he made a mistake in filling out his Student Officer application with regard to whether he had been disciplined by FedEx. He stated that he submitted the discipline letters from FedEx and that he could have removed them if he was attempting to be dishonest. (Testimony of Appellant)
8. Certification list number 260617, dated June 20, 2006 and seeking nine permanent full time Spanish-speaking police officers, placed the Appellant fourth on the list. The Appellant indicated that he would accept the appointment as police officer. (Packet submitted by HRD)

9. Edward Callahan, Director of Human Resources for the Department for over nineteen years, testified that detectives from the Department's Recruit Investigation Unit conduct background investigations on each applicant that include looking into their employment and military history. The information gathered on an applicant is presented at a Department roundtable. (Testimony of Callahan)
10. Deputy Superintendent Norman Hill testified that he is responsible for overseeing the detectives who conduct applicants' background checks. Hill testified that upon learning of Appellant's background, he was concerned by the Appellant's disrespect in the military and his tardiness and discipline with FedEx. (Testimony of Hill)
11. Both Callahan and Hill participated in the roundtable discussion concerning the Appellant's candidacy. Hill stated that the Appellant's employment record was evaluated "holistically" and seen as a pattern of behavior with past employers that made him an unsuitable candidate. Callahan testified that it was a collective decision of the roundtable to bypass the Appellant based on his history with the military and with FedEx. (Testimony of Callahan and Hill)
12. Hill testified that disrespect and truthfulness are important issues in the Department and that the Department relies heavily on a candidate's answering questions truthfully. (Testimony of Hill)
13. On May 18, 2006, the Department's Director of Human Resources wrote to HRD requesting that the Appellant be bypassed for the following reasons:

While Mr. Rodriguez served in the military from 1996-2000, he received four non-judicial punishments and was ultimately demoted. He is not eligible for re-enlistment with the Marines as a result. While working at Federal Express, Mr. Rodriguez was disciplined on at least two occasions however when completing page 11 of his employment application, he answered "no" to ever having been disciplined by an employer for any reason. This poses an untruthfulness issue. It is

the opinion of the Boston Police Department that Mr. Rodrigues is ineligible for appointment as a Boston Police Officer. (Ex. 6)

14. On November 27, 2006 Callahan wrote to HRD requesting that the Appellant be bypassed for appointment as a permanent full time police officer for the following reasons:

During his term of military service with the United States Marine Corps from 1996-2000, Rodrigues received four non-judicial punishments and was ultimately demoted. He is not eligible for re-enlistment in the U.S.M.C. While employed with Federal Express, Mr. Rodrigues was disciplined on at least two occasions. On page 2 of his Student Officer Application Form, Mr. Rodrigues answered "no" to the question "Have you ever been disciplined by an employer for any reason?" The letter concluded that it was the opinion of the Department that Appellant was ineligible for appointment as a Boston Police Officer. (Ex. 7)

15. A January 10, 2007 letter from the Department to HRD requested that the Appellant be PAR .09 removed from certification number 260617. (Packet submitted by HRD)
16. A January 23, 2007 letter to the Appellant from HRD notified him that HRD had determined that the reasons submitted by the Department requesting he be PAR .09 removed from certification number 260617 for the position of Spanish-speaking police officer are acceptable for removing him from not only this certification list but also this current Boston eligible list. (Packet submitted by HRD)
17. The Appellant filed his appeal with the Commission on March 21, 2007.
18. The Appellant was officially bypassed for appointment as a Boston police officer and was PAR .09 removed from certification number 260617 on June 7, 2007. (Packet submitted by HRD)
19. The Appellant was a good witness; his demeanor was calm and his answers were consistent with the documentary evidence in this case. He offered credible testimony regarding his interactions with a superior officer in the military. Further, he offered

credible testimony that he never sought to conceal any information regarding his employment at FedEx. (Testimony, demeanor of Appellant)

CONCLUSION:

The role of the Civil Service Commission is to determine "whether the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). See Town of Watertown v. Arria, 16 Mass. App. Ct. 331 (1983); McIsaac v. Civil Service Commission, 38 Mass. App. Ct. 473, 477 (1995); Police Department of Boston v. Collins, 48 Mass. App. Ct. 411 (2000); City of Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003). An action is "justified" when it is done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law." Id. at 304, quoting Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928); Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 211, 214 (1971). "In making that analysis, the Commission must focus on the fundamental purposes of the civil service system-to guard against political considerations, favoritism and bias in governmental employment decisions...and to protect efficient public employees from political control. When there are, in connection with personnel decisions, overtones of political control or objectives unrelated to merit standards or neutrally applied public policy, then the occasion is appropriate for intervention by the commission. It is not within the authority of the commission, however, to substitute its judgment about a valid exercise of

discretion based on merit or policy considerations by an appointing authority.” City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997)

The issue for the Commission is "not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the Appointing Authority made its decision." Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983). *See* Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

In a bypass appeal, the question is “whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken by the Appointing Authority.” City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). Reasonable justification requires that the Appointing Authority’s actions be based on adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and correct rules of law.” Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971). All applicants must be adequately and fairly considered.

Here, the Department failed to establish that it was reasonably justified in exercising its discretionary power in bypassing the Appellant for appointment to the position of permanent full time police officer. The Department maintains that the reason for the Appellant’s being bypassed centered on his employment history with the military and FedEx as a reason the Appellant would be unsuitable. Yet, the Appellant’s write-ups, incurred in his early twenties, were not for serious infractions and, after three years of

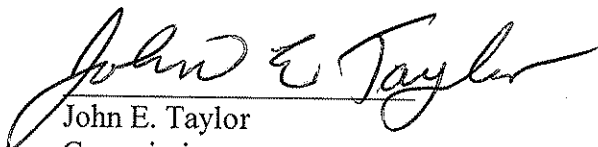
receiving no discipline, were clustered together and administered by one sergeant. However, Appellant received an honorable discharge and is eligible to re-enlist in the military.

Further, the Appellant offered credible testimony and was extremely forthcoming in terms of the information he divulged both in his application and at the hearing before the Commission. This honesty indicated that the Appellant did not intend to withhold information regarding his employment history and supported his testimony that he made an error in checking no in answer to the question "Have you ever been disciplined by an employer for any reason?"

The Appellant is a good candidate for a police officer position in the Department. The reasons submitted by the Department and approved by HRD were not sufficient based on a preponderance of the evidence as presented. Accordingly, the Appointing Authority did not have reasonable justification for bypassing the Appellant. Therefore, the appeal under Docket No. D1-07-78 is *allowed*.

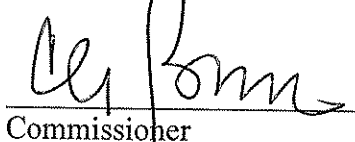
Pursuant to Chapter 534 of the Acts of 1976, as amended by Chapter 310 of the Acts and Resolves of 1993, the Commission hereby grants equitable relief to the Appellant and orders the Human Resources Division to place the Appellant's name at the top of the next certification list for appointment to the position of permanent full-time police officer to be issued by the Boston Police Department, until such time as the Appellant receives at least one consideration for the position of police officer.

Civil Service Commission


John E. Taylor
Commissioner

By vote of the Civil Service Commission (Henderson, Stein and Taylor, [yes]
Bowman, Chairman and Marquis, [no] Commissioners) on July 31, 2008.

A True copy. Attest:


Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(1), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:

Juan Rodrigues (Appellant)

Sheila B. Gallagher, Esq. (for Appointing Authority)

John Marra, Esq. (HRD)